

Panaji, 26th September, 2007 (Asvina 4, 1929)

SERIES II No. 25

OFFICIAL GAZETTE



GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

AWARD

Department of Labour

(Delivered on this 20th day of July, 2007)

Notification

No. 28/18/2007-LAB/840

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa, on 20-7-2007 in reference No. IT/44/96 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 22nd August, 2007.

IN THE INDUSTRIAL TRIBUNAL-
-CUM- LABOUR COURT-I
AT PANAJI

(Before Dilip K. Gaikwad, Presiding Officer)

Case No. IT/44/96

Miss Elsa Maria Fatima Dias,
H. No. 396, Bairo Cabeca,
Santa Cruz, Ilhas, Goa.

v/s

The General Manager,
M/s. Cosme Matias Menezes Ltd.,
Rua de Qurem, Panaji, Goa.

Party I is represented by Adv. S. Nabar.

Party II is represented by Adv. G. K. Sardessai.

This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947).

1. Facts giving rise to the present reference, stated in brief, are as follows:

The Government of Goa in exercise of its powers conferred on it by Section 10(1)(d) of the said Act, 1947, under order dated 23-9-1996 has referred to this Tribunal following dispute for adjudication:

"(1) Whether the action of the management of M/s. Cosme Matais Menezes Ltd., Panaji, in refusing employment to Miss Elsa Maria Fatima Dias, Posting Clerk w.e.f. 2-8-1995 is legal and justified?

(2) If not, to what relief the workman is entitled to ?"

2. In response to notices, both parties put their appearance in the Tribunal. The Party I presented her claim statement on 6-12-1996 at Exb. 5. It appears from claim statement that she was appointed as posting clerk by the Party II w.e.f. 16-1-1969. She was discharging her duties to satisfaction of her superior authorities. She has a good service record. On 28-7-1995, General Manager (Human Resource Development and General Administration) forced her to write a letter of voluntary retirement/resignation and to take premature retirement on ground that she became surplus staff member on implementation of computerized system to handle the work. In fact, she was never willing to take such retirement. The letter of voluntarily retirement/resignation obtained from her by the Party II on 28-7-1995 is under force/duress. By letter dated

1-8-1995 she informed the Party II that she is withdrawing her resignation. When she went to the Party II on 2-8-1995, the Party II did not allow her to join service. Action of the Party II in refusing her to join service is illegal and unjustified. Such refusal on part of the Party II amounts to retrenchment and same is in violation of provision contained in Section 25F of the said Act, 1947. She raised a dispute before the Asstt. Labour Commissioner. Proceedings which were held by the Asstt. Labour Commissioner for settlement, ended in failure. Therefore, the Government of Goa under its order dated 23-9-1996 referred the dispute to this Industrial Tribunal for adjudication as stated earlier.

3. The Party I by presenting the claim statement prayed for declaration that, action of the management of the employer in refusing the employment to her w.e.f. 2-8-1995 is illegal and unjust, that, termination of her service amounts to retrenchment and it is in violation of the Section 25F of the said Act, 1947, and for the direction for the Party II to pay one time compensation Rs. 6,18,830/- of which particulars are set out in statement attached to that of the claim, together with other consequential benefits.

4. The Party II resisted the claim by filing its written statement on 13-2-1997 at Exb. 6. It appears from the written statement that posting of stocks and sales came to be computerized in the month of April, 1994 to achieve speed and efficiency in the work. The Party II had no option but to ask the Party I to carry out the posting work with help of computer. The Party I was unsuitable to work as a posting clerk on computer. She was not competent to cope up with work. She was not doing work even for an hour during entire working day. She was unsuitable to undertake clerical jobs including entering of data on computer and bank reconciliation. She was complaining that she was suffering from headaches. Therefore, the Party II was compelled to request the Party I to take premature retirement. On this background the Party I voluntarily tendered resignation on 28-7-1995 without any force, duress or pressure. She has accepted the cheque of Rs. 35,000/- which was towards satisfaction of legal dues payable to her. The resignation is accepted with immediate effect. Thereafter, she has received two cheques towards satisfaction of leave encashment, gratuity. She has encashed all these three cheques. She has raised a dispute after encashment of the cheque which was for Rs. 35,000/-.

5. Further, it appears from written statement that the Party I is not entitled to challenge voluntary retirement, to withdraw the resignation and also to any of the reliefs claimed by her. Representative of the Party II attended the proceedings before the Assistant Labour Commissioner on two dates of hearing. The Assistant Labour Commissioner held the proceeding *ex parte* when the representative of the Party II could not attend the proceeding on 28-11-1995 and submitted failure report. On this and above grounds the Party II has prayed for dismissal of the claim statement.

6. The Party I submitted her rejoinder on 28-2-1997 at Exb. 7. She has denied all contentions which are raised by Party II in its written statement and which are adverse to her. It is needless to reproduce the denials.

7. The then learned Presiding Officer framed issues on 13-3-1997 at Exb. 9. The issues are recast by me on 16-7-2007 at Exb. 20. The parties did not lead evidence after recasting of the issues. The recast issues are as follows:-

1. Does the Party I prove that the Party II obtained letter of voluntary retirement/resignation from her under force and/or duress?
2. Whether the Party II refused the Party I to join her service w.e.f. 2-8-1995 ?
3. Whether action of the Party II in refusing the Party I to join her service amounts to retrenchment ?
4. Whether the action of the Party II in refusing employment to the Party I is legal and justified ?
5. Whether the Party I is entitled to reliefs as prayed for ?
6. What Award ?
8. My findings on the above issues are as follows:

Issue No. 1 : In affirmative.

Issue No. 2 : In affirmative.

Issue No. 3 : In affirmative.

Issue No. 4 : In negative.

Issue No. 5: Entitled to reinstatement in service with full back wages with consequential benefits.

Issue No. 6: As per final order.

REASONS

9. *Issue No. 1:* Admittedly, the Party I was appointed as posting clerk by the Party II under its appointment letter dated 20-3-1969. Xerox copy of the appointment letter is at Exb. W-1. She was confirmed in the service by the Party II under its confirmation letter dated 4-3-1970. Xerox copy of the confirmation letter is at Exb. W-2. The Party II promoted her to grade 'D' under its letter dated 7-10-1989. Xerox copy of the promotion letter is at Exb. W-3. The Party II celebrated its Foundation day on 27-8-1994. All employees who have completed 25 years of service are given special gifts. The Party I was one of such employees. She was invited for this function by the Party II under letter dated 17-8-1994 written by Vice-Chairman. Xerox copy of this letter is at Exb. W-4.

10. The Party I examined herself at Exb. 13. It appears from her evidence that as a posting clerk, her duties

were to post goods, receipt notes, delivery notes and to prepare sales statement. She has worked under four to five different Managers and Officers in-charge. She never received memos or show cause notice from any of the superior officers in respect her performance in duties. On 13-6-1995 she received letter from officer in-charge/General Manager alleging that she did not attend computer work on ground that she had continuous headache and that she does not work for more than an hour during entire working day. She was informed under this letter that the Party II is compelled to retire her from service prematurely. The allegations made in this letter are false therefore she sent letters to the Union and also to Labour Commissioner. On 28-7-1995 General Manager called her in his cabin and dictated letter of her voluntary retirement from service. She had never requested for permission to take such retirement. Her service for eight years approximately was in balance. The Manager told her that "my heart does not say that you should go for voluntary retirement but my mind says so". She sent a letter on 1-8-1995 and thereby informed General Manager of the Party II that she has withdrawn the resignation/voluntary retirement letter.

11. In support of her case the Party I has produced xerox copy of letter dated 13-6-1995 at Exb. W-5. Xerox copies of letters written to union on 17-6-1995 and to Labour Commissioner on 20-6-1995 are produced by her at Exb. 6, colly. She has produced xerox copy of letter dated 1-8-1995 at Exb. W-7 where under she informed the General Manager of the Party II that she has withdrawn resignation/voluntary retirement letter dated 28-7-1995.

12. The Party II examined its Accounts Officer, Mr. Nelson Rodrigues on its behalf at Exb. 17. According to him, the Party I has tendered resignation of her service voluntarily. The resignation is accepted by the Party II. Acceptance of the resignation is informed by the Party I to the Party II under letter dated 28-7-1995. The Party I applied for Leave Travelling Allowance and Gratuity. She is paid with all legal dues which were payable to her.

13. Xerox copy of letter dated 28-7-1995 whereunder the Party I was informed that the resignation tendered by her is accepted, is at Exb. E-3. Xerox copies of requisition for leave travelling allowance and of application for gratuity given by the Party I under her signatures are produced at Exb. E-4 and Exb. E-5 respectively.

14. The Party I challenged the voluntary retirement/resignation on the ground that it is obtained by the Party II by force/duress. Though there is specific pleading in her claim statement, her evidence before the court is totally silent in this regard. It appears from voluntary retirement/resignation letter dated 28-7-1995 (Exb. E-2) that the Party I was told to take voluntary retirement. Therefore and pursuant to discussion with General Manager, the Party I became ready and willing to take

voluntary retirement provided that she is paid an amount of Rs. 35,000/- and other dues such as gratuity, provident fund, leave encashment etc. with a service certificate. The Party II immediately issued cheque of Rs. 35,000/- in favour of the Party I. Xerox copy of the cheque is at Exb. W-10. She has encashed this cheque.

15. Learned advocate appearing on behalf of the Party I argued that the Party II drawn the cheque of Rs. 35,000/- in favour of the Party I on the very day of the letter of voluntary retirement/resignation, that is, on 28-7-1995. This fact itself goes to show that the Party II had determined to retire the Party I compulsorily from the service with immediate effect. Therefore, according to him, it can safely be concluded that the letter of voluntary retirement/resignation is obtained by the Party II from the Party I by force or under duress.

12. To counter argument advanced by learned advocate of the Party I, learned advocate of the Party II argued that the Party I has encashed the cheque of Rs. 35,000/-. If at all the Party I was not ready and willing to give resignation or to take voluntary retirement, it was not expected from her to encash the cheque. Not only that, the Party I has submitted requisition for leave travelling allowance and application for gratuity also. She did not make complaint immediately to superior authority of the Party II alleging that the General Manager obtained the letter of voluntary retirement/resignation from her by force or duress. All these circumstances, according to him, are pointer of fact that, the letter of resignation given by the Party I is voluntary. To prove that the letter of resignation given by the Party I is voluntary, he relied upon decisions given by the Hon'ble High Court of Allahabad in case of *M/s. Delta Engineering Company Meerut v/s The Presiding Officer, Industrial Tribunal V Meerut and others*, reported in 1997 (77) FLR 520, by the Hon'ble High Court of Judicature at Bombay in case of *Association Engineering Workers, Petitioners v/s Permanent Magnets Ltd., and others, Respondents*, reported in 1993 I CLR 93. In case of *Mahindra and Mahindra Ltd., Petitioner v/s Vijay Damodar Mehta and others, Respondents* reported in 2003 I CLR 998 and by the Hon'ble Supreme Court in case of *North Zone Cultural Centre and another, Appellants v/s Vedpathi Dinesh Kumar, Respondent*, reported in 2003 II CLR 376.

13. The Hon'ble High Court of Allahabad held in case of *M/s. Delta Engineering Company Pvt. Ltd., Meerut*, that—

"The primary burden of establishing the fact that the thumb impressions/signatures of the employees were obtained by the petitioner on blank papers and such papers were subsequently used as resignation letter to the disadvantage of the employees and further that the consent for resignation was taken on false promise and inducement which was not intended to be fulfilled, will always remain upon the employees at whose

instance the reference was made. It is only after the evidence in support of such pleas is adduced that the petitioner is called upon to prove that the employees had voluntarily tendered their resignation and the same were accepted by the petitioners."

14. In case of *Association of Engineering Workers*, the Assistant Labour Commissioner found that the worker Mohan R. Kadam who was represented by the petitioner union had resigned by writing in his own handwriting in Marathi. The resignation was accepted by the Company, the first respondent, on the very day of the resignation. The workman came to be relieved from duty by the management on the same day. The complaint lodged by the workman to the Borovli Police Station was not specific. The workman did not mention what type of pressure was brought on him for resignation. He did not mention who forced him to resign. Material produced on record was showing that the legal dues payable to the workman were sent to him by a cheque after one month of resignation. The workman encashed the cheque without murmur. He requested the company by letter that from the amount of legal dues payable to him a particular amount may be recovered and adjusted towards payment of loan taken by him from a particular credit society. The company accordingly adjusted and made payment of the outstanding loan. It is thereafter the petitioner union raised the dispute on behalf of the workman. The Hon'ble High Court of Bombay held that it is a clear case of voluntary resignation.

15. In case of *Mahindra and Mahindra Ltd.*, Respondent was in employment of this company which was the petitioner. The employee was held while committing theft of two copper hemmer heads. He gave confession in writing and tendered a resignation which was accepted. Later-on he raised a dispute that his resignation was obtained by coercion or force. On reference, Labour Court accepted his version of forced resignation and directed his reinstatement without back wages. The petitioner took up the matter on petition before the Hon'ble High Court Bombay. After considering evidence on record, the Hon'ble High Court disbelieved case of the respondent that he was forced or coerced to resign and allowed the petition.

16. In case of *North Zone Cultural Centre and another*, the respondent who was government employee had tendered his resignation on 18-11-1988. The appellant company accepted resignation on the very day but acceptance was communicated on 1-12-1988. In the meantime respondent withdrew his resignation on 21-11-1988. The Hon'ble Supreme Court considered the effect of such withdrawal and held that the resignation takes effect on its acceptance and the non-communication of acceptance does not

17. In the present case, there is no grievance by the Part I that her signature was obtained by the Part II on blank paper, and that, such paper is subsequently used as a resignation letter. It is also not grievance of the

Party I that a consent for resignation was taken on false promise and inducement by the Party II. To this extent facts of the reported case of *M/s. Delta Engineering Pvt. Co. Ltd., Meerut, reported in 1997 (77) FLR 520* are different from that of the present one. However, relying upon view taken by the Hon'ble High Court of Allahabad in this reported case it can safely be said that primary burden of establishing the fact that the Party II obtained letter of voluntary retirement/resignation from the Party I under force/or duress is upon the Party I at whose instance the reference is made.

18. It is admitted position that the letter of voluntarily retirement/resignation dated 28-7-1995 (Exb. E-2) is given by the Party I in her own hand-writing and under her signature, that, the letter of voluntarily retirement/resignation is accepted by the Party II on the very day i.e. on 28-7-1995, and that, the cheque of Rs. 35,000/- given by the Party II on the very day, that is, on 28-7-1995 is encashed by the Party I. These facts are similar with those which are in case of *Association of Engineering Workers, reported in 1993 I CLR 93*. In the present case there is no evidence to show that the Assistant Labour Commissioner has found that the letter of retirement/resignation given by the Party I is voluntary.

19. Facts of the case of *Mahindra and Mahindra Ltd., reported in 2003 I CLR 998* are different from that of the present one.

20. Though the Party II accepted letter of voluntary retirement/resignation submitted by the Party I, on the very day i.e. on 28-7-1995, the Party II communicated acceptance of the voluntary retirement/resignation to the Party I, by letter dated 28-7-1995 which is received by the Party I on 4-8-1995. This fact becomes clear from the date mentioned under signature of the Party I on postal acknowledgement (Exb. E-3 colly). It follows that acceptance of the voluntary retirement/resignation is communicated to the Party I afterwards. The Party I meantime by letter dated 1-8-1995 sent to the Party II, has withdrawn the letter of voluntary retirement/resignation with immediate effect. These facts and the facts from the reported case of *North Zone Cultural Centre and another, reported in 2003 II CLR 376* are identical with each other. In my view if it is proved by the Party I that the letter of voluntary retirement/resignation is obtained from her by force or duress, it will not be necessary to consider effect of withdrawal of the voluntary retirement/resignation submitted by the Party I before she received letter of acceptance of resignation.

21. The Concise Oxford Dictionary, 9th Edition, lays down meanings of "voluntary" as able to act of ones own free will, of "force" as coercion or compulsion, and of "duress" as compulsion, threat or violence illegally used to force a person to act against his or her will. The Party II by its letter dated 13-6-1995 informed the Party I that because of her inability to cope up with its

work, it is compelled to retire her from its services prematurely. This letter itself throws light on intention of the Party II. To be more specific it is the Party II who was intending to retire the Party I from its services for the reasons stated in the said letter dated 13-6-1995. Further, from the letter dated 28-7-1995 it becomes apparent that, General Manager (Human Resource Development and General Administration) told the Party I, and therefore, the Party I submitted letter of voluntary retirement/resignation.

22. Learned advocate of the Party II further argued that the Party I neither disclosed name of the Officer of the Party II and by whom the letter of voluntary retirement/resignation is obtained from the Party I, nor the Party I made complaint against that officer to higher authority of the Party II. There is also no complaint by the Party I against the concerned officer to the Police alleging that letter of voluntary retirement/resignation is obtained by her by force or under duress. Therefore, he urged not to accept and rely upon case made out by the Party II. In this context, he relied upon decisions given by the Hon'ble High Court of Madhya Pradesh (Indore Bench) in case of *Hira Mills Ujjain and others v/s Babu and others*, reported in 1998 (79) 574 and by the Hon'ble High Court of Judicature at Bombay in case of *the Premier Automobiles Ltd., v/s the Premier Automobiles Union*, reported in 1994 III LLJ (supplement) 1048.

23. In case of *Hira Mills Ujjain* the Respondent No. 1 had stated in para No. 4 of his statement that one Shri Sharma, Labour Officer, promised that he will be given either the employment or the retrenchment allowance. When he was asked about identity of Shri Sharma, during cross examination, he said that he does not know what is the full name of the said Sharma and whether the said Sharma is working in the Mill or not. The Hon'ble High Court of Madhya Pradesh (Indore Branch) observe that it is surprising that how a worker has believed a promise made by a person who is not known and whose designation is also not certain.

The Party I in the present case no-where alleged that the concerned officer of the Party II promised her that she will be given either the employment or the retrenchment allowance, and therefore by relying upon such promise she submitted the letter of voluntary retirement/resignation. These facts from the present case are clearly distinguishable from that of the case of *Hira Mills, Ujjain* referred to above. With respect I am of the opinion that decision relied upon by the advocate of the Party II from this reported case is not applicable to the present case.

24. In case of *the Premier Automobiles Ltd.*, the second respondent alleged that he wrote letter of resignation out of fear. In his cross examination he stated that he did not file any complaint to the Police station, of this criminal intimation. He further stated that he went to the police station to complain but his complaint was

not recorded. Learned advocate representing the Party II in the present case pointed out that the said contention raised by the second respondent was not accepted by the Hon'ble High Court.

25. The Party I has no allegation that she submitted letter of voluntary retirement/resignation out of fear. Therefore, in my view the question of filing complaint (FIR) to the Police does not arise. Admittedly, there is no complaint by the Party I to higher authorities of the Party II and also to the Police alleging that the letter of voluntary retirement/resignation is obtained from her by officer of the Party II by force or under duress. Only because there are no such complaints that will not be a sufficient ground to negative the entire case made out by the Party I, especially, when there is documentary evidence in the form of letters dated 13-6-1995 and dated 28-7-1995 (Exb. W-5 and Exb. E-2 respectively) to raise curtain to bring reality on record. If these two letters dated 13-6-1995 and 28-7-1995 are read together, the cumulative effect will certainly lead to irresistible conclusion that the letter of voluntary retirement/resignation given by the Party I on 28-7-1995 was not at her own free will, but it was because of compulsion on part of the Officer of the Party II. Even though the Party I has encashed the cheque of Rs. 35,000/- after she submitted the letter of voluntary retirement/resignation, that is not a ground to overlook the reasons leading to submission of the letter of retirement/resignation by the Party I. The argument advanced by learned advocate of the Party II must fail. Case made out by the Party I appears to be more probable, convincing and trust-worthy than that of the Party II. I, therefore, answer the issue in affirmative.

26. *Issue No. 2:* It has come in evidence of the Party I that by sending letter dated 1-8-1995 she informed the Party II that the letter of voluntary retirement/resignation is taken by the General Manager of the Party II on 28-7-1995 under force and duress and that she has withdrawn the said letter with immediate effect. The Party II did not allow her to join duties after she sent the letter dated 1-8-1995.

27. Xerox copy of letter dated 1-8-1995 produced at Exb. W-7 supports that the Party I had withdrawn the letter of voluntary retirement/resignation dated 28-7-1995. She had raised a dispute before the Assistant Labour Commissioner. In this connection, reference of xerox copy of the report of failure of conciliation proceedings submitted by the Assistant Labour Commissioner to the Secretary, Labour, Secretariat, Panaji, Goa and which is produced at Exb. W-8 can conveniently be made. Para No. 3 of the report states that the Party I wrote a letter dated 1-8-1995 to the Party II withdrawing the said resignation/voluntary retirement dated 28-7-1995 and reported for work from 2-8-1995 and that, the company that is, the Party II accepted the letter but did not allow the Party I to report for work. In my view, if the Party II would have allowed the Party I to allow to join duty, there was no

reason for Party I to raise dispute before the Assistant Labour Commissioner. Evidence of the Party I, supported by xerox copies of the letter dated 1-8-1995 and of the failure report sent by the Assistant Labour Commissioner leads to logical conclusion that after withdrawing the letter of voluntary retirement/resignation, the Party I went to the Party II to join her service, but it is the Party II who refused her to join her service. I, therefore, answer the issue in affirmative.

28. *Issue No. 3:* The definition of the term "retrenchment" under Section 2 (oo) of the said Act, 1947 is very wide and it is in two parts. The first part is exhaustive which lays down that retrenchment means termination of service of the workman by the employer "for any reasons whatsoever", otherwise than as a punishment inflicted by way of disciplinary action. Thus, the main part itself excludes the termination of service as a measure of punishment inflicted by way of disciplinary action from the ambit of definition of retrenchment. The second part further excludes (i) voluntary retirement of the workman or (ii) retirement of the workman on reaching the age of superannuation or (iii) termination of the service of the workman as a result of non-renewal of the contract of employment or (iv) termination of service on the ground of continued ill-health of the workman.

29. In the present case it is proved that the letter of voluntary retirement/resignation is obtained from the Party I by the Party II under force or duress. It impliedly means that there is no voluntary retirement of the Party I. Termination of her service does not come within the scope of second part of the definition of the term "retrenchment". The Party II refused to allow the Party I to join her service otherwise than as a punishment inflicted by way of disciplinary action. Such a refusal by the Party II is a termination which amounts to retrenchment as defined under Section 2 (oo) of the said Act, 1947. I, therefore, answer the issue in affirmative.

30. *Issue No. 4:* The Party II has obtained the letter of voluntary retirement/resignation from the Party II because the Party I was unable to cope up with its work and as per its requirements which is apparent from the letter dated 13-6-1995. There is no evidence to show as to whether the Party II brought to notice of the Party I that she is unable to cope up with its work as per its requirements and that it gave opportunity to Party I to make improvements in her performance. The Party II did not hold inquiry also against the Party I in respect of her performance in discharging her duties. The Party II by adopting short-cut method has forced the Party I to be out of service by obtaining from her letter of voluntary retirement/resignation by force or under duress. Such kind of termination of service cannot be said to be legal and justified.

31. Section 25 F of the said Act, 1947 lays down that:

"No workman employed in any industry who has been in continuous service for not less than one

year under an employer shall be retrenched by that employer unless—

- (a) *the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice,*
- (b) *the workman has been paid at the time of retrenchment, compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months and,*
- (c) *notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]*

32. The Party II has paid Rs. 35,000/- under cheque to the Party I on the very day immediately after the Party I submitted the letter of voluntary retirement/resignation. It is nowhere explained by the Party II in its written statement or by its witness in his evidence as to whether the said amount of Rs. 35,000/- includes the payments which are made condition precedent to retrenchment of workman under Section 25 F of the said Act, 1947. There is also no evidence by the Party II to show that it has complied with Section 25 F (e) of the said Act, 1947. On this ground also I hold that refusal of employment which amounts to termination of service of the Party I by the Party II is not legal and justified. My answer to the issue is in negative.

33. *Issue No. 5:* The Party I in her claim statement prayed for declaration that the action of the management of the employer, that is, of the Party II in refusing the employment to her with effect from 2-8-1995 is illegal and unjust, that the termination of her service amounted to retrenchment and in violation of Section 25 F of the Industrial Disputes Act, and for direction to the employer, that is, the Party II to pay her one time compensation as per the statement attached to the claim statement, together with consequential benefits.

34. So far relief of declarations is concerned, considering the scope of the reference made by the Government of Goa to this Industrial Tribunal it will be sufficient if it is declared that, action of the management in refusing employment to the Party I is not legal and justified.

35. Now coming to the prayer of compensation it is necessary to have reference of provisions contained in Section 11 A of the said Act, 1947. This Section lays down that:

"Where an industrial dispute relating to the discharge or dismissal of a workman has been

referred to a Labour Court, Tribunal or National Tribunal for adjudication and in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this Section the Labour Court, Tribunal or National Tribunal as the case may be, shall rely only on the material on record and shall not take any fresh evidence in relation to the matter."

The above provision is quoted as it is, with a view to make it clear that the said provision does not speak about awarding of compensation in lumpsum in case if the discharge or dismissal of the workman is set aside. Even then the Tribunal has discretion to award adequate monetary compensation instead of reinstatement. In the present case granting the relief of compensation does not appear to be expedient.

36. Action of the Party II in refusing employment to the Party I is not proved to be legal and justified. It has come in evidence of the Party I that since the date of termination of her service she is unemployed. Therefore, though there is no prayer by the Party I, the Industrial Tribunal by exercising powers conferred on it under Section 11-A of the said Act, 1947 can direct reinstatement of the Party I in the service with full back wages and consequential benefits. I, hold that she is entitled for reinstatement in service with full back wages with consequential benefits. I answer the issue accordingly.

As a result of findings given to the Issue Nos. 4 and 5, I proceed to adjudicate the reference by passing order as follows:

ORDER

1. The action of the Management of M/s. Cosme Matais Menezes Ltd., Panaji, that is, the Party II in refusing employment to Miss Elsa Maria Fatima Dias, Posting Clerk, with effect from 2-8-1995 is not legal and justified.
2. The Party I is entitled to the relief of reinstatement in the service with full back wages with consequential benefits.
3. Termination of service of the Party I by the Party II w.e.f. 2-8-1995 is set aside.
4. The Party II is directed to reinstate the Party I in the service with full back wages with consequential benefits.

5. No order as to cost.

6. The Award be sent to the Government of Goa as per provision contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/-
(Dilip K. Gaikwad),
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court-I.
Dated: 23-7-2007.
Panaji.

Notification

No. 28/18/2007-LAB/835

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 26-7-2007 in reference No. IT/7/2006 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 22nd August, 2007.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I AT PANAJI-GOA

(Before Shri Dilip K. Gaikwad, Presiding Officer)

Case No. IT/7/2006

Shri Jayant G. Naik,
H. No. 167, Nr. Shantadurga Temple,
Sancoale, Goa. ... Workman/Party I

v/s

The Sarpanch,
Sancoale Village Panchayat,
Mormugao, Goa. ... Employer/Party II

Workman/Party I - In person.

Employer/Party II - In person.

AWARD

(Passed on this 26th day of July, 2007)

This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947).

1. Facts of the reference stated in brief are as follows:

The Government of Goa in exercise of powers conferred on it by Section 10(1)(d) of the said Act, 1947,

under order dated 21-9-2005 has referred to this Tribunal following dispute for adjudication.

(i) Whether the action of the Village Panchayat Sancoale, Sancoale-Goa, in terminating the services of Shri Jayant G. Naik, Supervisor-cum-Ambulance Driver w.e.f. 30-4-2004 is legal and justified ?

(ii) If not, what relief the workman is entitled to ?

2. In response to notices, both parties put their appearance in this Tribunal. The Party I filed application on 17-7-2007 at Exb. 3 stating that during pendency of this proceeding the Party II by order dated 10-1-2006 has reappointed him w.e.f. 2-1-2006 along with continuity in service. He does not wish to proceed with the reference. Therefore, he has requested to pass appropriate award.

3. The Party II has no objection to grant the prayer made by the Party I in the application Exb. 3.

4. Since the Party I is reinstated in service by the employer i.e. by the Party II, it is needless to adjudicate the dispute which is referred by the Government of Goa under its order dated 21-9-2005 to this Industrial Tribunal. The reference does not survive. I, therefore, proceed to pass following order.

ORDER

1. The dispute as to whether the action of the Village Panchayat Sancoale, Sancoale-Goa in terminating the services of Shri Jayant G. Naik, Supervisor-cum-Ambulance Driver w.e.f. 30-4-2004 is legal and justified, does not survive.
2. The reference stands disposed of accordingly, with no order as to cost.
3. The award be submitted to the Government of Goa as per provisions contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/-
(Dilip K. Gaikwad),
Presiding Officer,
Industrial Tribunal-cum-
Labour Court-I.

Notification

No. 28/18/2007-LAB/836

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 22-5-2007 in reference No. IT/22/98 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 22nd August, 2007.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I AT PANAJI-GOA

(Before Shri Dilip K. Gaikwad, Presiding Officer)

Ref. No. IT/22/98

Workmen, represented by
Fort Aguada Beach Resort
Employees Union.

... Workman/Party I

v/s

M/s. Fort Aguada Beach
Resort, Sinquerim, Goa.

... Employer/Party II

Workmen/Party I - Represented by Mr. Subhash Naik George.

Employer/Party II - Represented by Adv. P. J. Kamat.

AWARD

(Passed on this 22nd day of May, 2007)

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (in short, the said Act of 1947).

1. In exercise of powers conferred by Section 10(1)(d) of the said Act, 1947, the Government of Goa has referred to this Tribunal following dispute for adjudication.

"Whether the action of the management of M/s. Fort Aguada Beach Resort, Sinquerim-Goa in transferring following workmen to the places shown against their names is legal and justified ?

1. Shri Ashok Deulkar, Security Valet ... Varanasi
2. Shri Micheal Fernandes, Waiter ... Lukhnow
3. Shri Agnelo Quadros, Waiter ... Agra
4. Shri Sitaram Rathod, Head Mali ... Ernakulam
5. Shri Sham Kerkar, Trainee Asstt. ... Aurangabad Operator
6. Shri Joseph Gomes, Security Guard... Udaipur

If not, to what relief they are entitled?"

2. In response to notices, both the parties appeared before the Tribunal. Party-I filed its claim statement at Exb. 5. Party-II submitted its written statement which is at Exb. 6.

3. The Party II is a five star deluxe hotel situated at Sinquerim, Bardez, Goa. It has transferred the above mentioned workmen to the places shown against their names. The workmen who are the Party I challenged its order before the Labour Commissioner. Since there was no settlement between the parties, the dispute, as stated earlier, came to be referred by the Government of Goa.

4. In pursuance of application (Exb. 17) dated 18-12-2000 award is passed in respect of workmen Micheal Fernandes, Agnelo Fernandes and Joseph Gomes on 6-10-2000. The award is at Exb. 16.

5. It appears from the application (Exb. 17) that the workman, Ashok Deulkar also resigned from the service. He has collected all the dues from the Party II. Now he has no dispute in respect of the transfer.

6. Today terms of settlement which are arrived at between workmen Sitaram Rathod and Sham Kerkar on the one hand, and the Party II on the other, are filed on record. Same are at Exb. 20. Mr. Subhash Naik George and Adv. Mr. P. J. Kamat who are representing the Party-I and Party-II respectively, are present. I heard both of them. The terms of settlement are accepted and those are read and recorded. Mr. Subhash Naik George and Adv. Mr. P. J. Kamat submitted to dispose off the reference on basis of the application (Exb. 17) and of the terms of settlement.

7. The reference is already disposed of by of award dated 6-10-2000, in respect of the workmen Micheal Fernandes, Agnelo Quadros and Joseph Gomes. In view of the applications (Exb. 17) wherein it is stated that the workmen Ashok Deulkar has resigned from the services of the Party-II, and also in view of the terms of the settlement referred to above, I hold that the reference does not survive and therefore same will have to be disposed off. With this I pass following order.

ORDER

1. The reference disposed off with no order as to cost.
2. The award be sent to the Government of Goa as per provisions of Section 15 of the Industrial Disputes Act, 1947.

Sd/-
(Dilip K. Gaikwad),
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court-I.

Notification

No. 28/18/2007-LAB/943

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa, on 13-8-2007 in reference No. IT/87/99 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 28th August, 2007.

IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-I AT PANAJI-GOA

(Before Shri Dilip K. Gaikwad, Presiding Officer)

Case No. IT/87/99

The General Secretary,
Gomantak Mazdoor Sangh,
Kamakshi Krupa, Gr. Floor,
Khadpabandh, Ponda, Goa.

... Workman/Party I

v/s

M/s. Vinayak Plastics Pvt. Limited,
Plot No. 99/194,
Bicholim Industrial Estate,
Bicholim, Goa.

... Employer/Party II

Workman/Party I is represented by P. Gaonkar
(Representative).

Employer/Party II is represented by K. P. Agarwal.

AWARD

(Passed on this 13th day of August, 2007)

This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947).

1. Facts of present reference, stated in brief, are as follows:

The Government of Goa in exercise of powers conferred on it by Section 10(1)(d) of the said Act, 1947, under order dated 23-7-1999 has referred to this Industrial Tribunal following dispute for adjudication.

(i) In view of the fact that Kumari Indira V. Telgi alias Telkeri whose E.S.I. card mentions that M/s. Vinayak Plastics Limited is her employer and that her name was borne on the roll of M/s. Pioneer Packaging System on the last working day and now that, her services have been terminated w.e.f. 7-4-1997, whether the action of the concerned management of M/s. Vinayak Plastics Pvt. Limited or M/s. Pioneer Packaging System, Bicholim-Goa. Either jointly or severally, as the case may be, to terminate the services of Kum. Telgi is legal and justified ?

(ii) If not, to what relief the workman is entitled ?

2. In response to notices, both parties put their appearance in this Industrial Tribunal. The Party I presented her claim statement on 15-11-1999 at Exb. 3. The Party II filed written statement on 10-12-1999 at Exb. 4. The Party I submitted rejoinder on 3-1-2000 at Exb. 6.

3. The then learned Presiding Officer framed issues at Exb. 14. The Party I examined the representative Puti Gaonkar at Exb. 22 and filed her own affidavit at Exb. 23. She is cross examined by K. P. Agarwal on behalf of the Party II. Affidavit of the said K. P. Agarwal is filed by the Party II at Exb. E-4. In addition, oral evidence is also alongwith his affidavit. He is partly cross examined on behalf of the Party I.

4. Both parties filed today terms of settlement whereunder it is agreed that the Party I shall be paid her legal dues as if she is retrenched, that her service for the purpose of legal dues shall be calculated from 1-11-1992 to 7-4-1997 that the legal dues which are agreed to be paid are paid under cheque bearing No. 022155 dated 16-7-2007, and that, the workperson shall have no claims of whatever nature including re-employment against management, and that, it is the full and final settlement of all claims.

5. The above terms of settlement are signed by the Party I, her representative and by K. P. Agarwal representing the Party II. The terms of settlement are taken on record and those are at Exb. 28. In view of the settlement between the parties, I hold that the dispute which is referred to this Industrial Tribunal for adjudication does not survive. With this,

I proceed to adjudicate the dispute by passing order as follows:

ORDER

1. The dispute as to whether in view of the fact that Kumari Indira V. Telgi alias Telkeri whose E.S.I. card mentions that M/s. Vinayak Plastics Ltd., is her employer and that her name was borne on the roll of M/s. Pioneer Packaging System on the last working day and now that, her services have been terminated w.e.f. 7-4-1997, whether the action of the concerned management of M/s. Vinayak Plastics Pvt. Limited or M/s. Pioneer Packaging System, Bicholim-Goa, either jointly or severally, as the case may be, to terminate the services of Kum. Telgi is legal and justified, does not survive.
2. The dispute as to whether the workman is entitled to any relief, does not survive.
3. No order as to cost.
4. The award be submitted to the Government of Goa as per provisions contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/-
(Dilip K. Gaikwad),
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court-I.